

# ARTICLE 7

## Zoning Ordinance Administration

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## **CHAPTER 17.80 - ADMINISTRATIVE RESPONSIBILITY**

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### **Sections:**

- 17.80.010 - Purpose of Chapter
- 17.80.020 - Planning Agency Defined
- 17.80.030 - City Council
- 17.80.040 - Planning Commission
- 17.80.050 - Site Plan and Architectural Approval Committee (SPARC)
- 17.80.060 - Community Development Director

### **17.80.010 - Purpose of Chapter**

This Chapter describes the authority and responsibilities of City staff and official bodies in the administration of this Zoning Ordinance, in addition to the Council.

### **17.80.020 - Planning Agency Defined**

The functions of a Planning Agency shall be performed by the Lodi City Council, Planning Commission, Site Plan and Architectural Review Committee, Community Development Director, and Community Development Department, in compliance with State law (Government Code Sections 65100, et seq.)

### **17.80.030 - City Council**

The Lodi City Council, in matters related to the City's planning process, shall perform the duties and functions identified in this Zoning Ordinance and shall be referred to as the "Council."

### **17.80.040 - Planning Commission**

- A. Establishment.** The seven-member Lodi Planning Commission is established by Section 2.16.010 (Establishment) of this Code and shall be referred to in this Zoning Ordinance as the "Commission."
- B. Appointment.** The members of the Commission are appointed by the Mayor with the consent of the Council in compliance with Section 2.16.020 (Appointment) of this Code.
- C. Rules.** The Commission shall adopt rules of order and procedure in compliance with Section 2.16.030 (Officers S Rules S Powers and Duties) of this Code.
- D. Terms of office.** The terms of office of the members of the Commission shall be for four years from their respective dates of appointment in compliance with Section 2.16.040 (Terms of office) of this Code.

- E. Authority and duties.** The Commission shall have the authority to perform the duties and functions established by Section 2.16.030 (Officers S Rules S Powers and Duties) of this Code and shall perform the duties and functions identified in this Zoning Ordinance.

### **17.80.050 - Site Plan and Architectural Approval Committee (SPARC)**

- A. Establishment.** The Lodi Site Plan and Architectural Approval Committee is hereby established and shall be referred to in this Zoning Ordinance as the “SPARC.”
- B. Appointment.** The SPARC members shall be appointed by the Mayor with the consent of the Council.
- C. Membership.** The SPARC shall consist of four members, appointed as identified above, and one member appointed by the Commission from among its membership. Each shall be appointed to a four-year term. Commission member is Vice-chairman on a rotating basis.
- D. Authority and duties.** The SPARC shall have the authority to assist the Commission in reviewing site plans and architectural drawings and shall perform the duties and functions identified in this Zoning Ordinance.

### **17.80.060 - Community Development Director**

- A. Appointment.** The Community Development Director shall be appointed by the City Manager and shall be referred to in this Zoning Ordinance as the “Director.” Whenever the term Director is used in this Zoning Ordinance, it shall be understood to include the phrase “or designee.”
- B. Duties and authority.** The Director shall:
1. Have the responsibility to perform all of the functions designated by State law (Government Code Section 65103 [Planning Agency Functions]);
  2. Have the responsibility and authority to take action on applications for all administrative permits and approvals issued by the Department;
  3. Perform other responsibilities assigned by the City Manager; and
  4. Perform the duties and functions identified in this Zoning Ordinance, including the initial review of land use applications, in compliance with State law (Government Code Sections 65901 et seq.), Section 17.40.020 (Authority for Land Use and Zoning Decisions), Table 4-1 (Review Authority), the California Environmental Quality Act (CEQA), and the *Lodi Environmental Review Guidelines*.
- C. Delegation and supervision.** The Director may delegate the responsibilities of the Director to assigned Department staff under the supervision of the Director. When the Director designates a Department staff person, the staff person shall perform the duties

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assigned by the Director in addition to those listed in Subsection B. above, as appropriate to the personnel title of the designee.

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## **CHAPTER 17.82 - NONCONFORMING USES, STRUCTURES, AND PARCELS**

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### **Sections:**

- 17.82.010 - Purpose of Chapter
- 17.82.020 - Restrictions on Nonconforming Uses and Structures
- 17.82.030 - Nonconforming Signs
- 17.82.040 - Single- and Multi-Family Dwelling Units Exempt
- 17.82.050 - Public Structures and Utilities Exempt
- 17.82.060 - Nonconforming Parcels
- 17.82.070 - Conformity of Uses Requiring Use Permits
- 17.82.080 - Unlawful Uses and Structures
- 17.82.090 - Nuisance Abatement

### **17.82.010 - Purpose of Chapter**

This Chapter establishes uniform provisions for the regulation of nonconforming uses, structures, and parcels, as these terms are defined in Article 7 (Definitions).

- A. Within the zoning districts established by this Zoning Ordinance, there exist land uses, structures, and parcels that were lawful before the adoption, or amendment of this Zoning Ordinance, but which would be prohibited, regulated, or restricted differently under the terms of this Zoning Ordinance or future amendments.
- B. It is the intent of this Zoning Ordinance to discourage the long-term continuance of these nonconformities, but to permit them to exist under limited conditions.
- C. This Chapter does not apply to land uses, structures, and parcels that were illegally established, constructed, or divided. These are instead subject to Chapter 17.90 (Enforcement).

**17.82.020 - Restrictions on Nonconforming Uses and Structures**

Nonconformities may be continued subject to the following provisions.

**A. Nonconforming uses of land.** A nonconforming use of land, or a nonconforming use within a structure, may be continued, transferred, or sold, only as follows.

**1. Prohibited activities for a nonconforming use.** Owners or tenants of nonconforming uses shall not:

- a. Enlarge, expand, extend, or increase the nonconforming use either on the same or adjoining parcel(s), except in compliance with the provisions of this Zoning Ordinance;
- b. Extend the nonconforming use to occupy a greater area of land than that occupied by the use at the time it became nonconforming. A nonconforming use of a portion of the structure which otherwise conforms to the regulations of the subject zoning district shall not be expanded or extended into any other portion of the structure nor changed except to a conforming use;
- c. Move the nonconforming use, in whole or in part, to any other location on the subject parcel; or
- d. Retain the benefits under this Chapter if the nonconforming use ceases for 180 days or longer, in compliance with Subparagraph 3. (Loss of nonconforming use status), below.

**2. Replacement of a nonconforming use.**

- a. A nonconforming use may be changed to a use of the same or more restrictive classification.
- b. The replacement use shall serve as the "new bench mark" in terms of establishing the acceptable level of nonconformity.
- c. Where a nonconforming use is changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of a less restrictive classification.
- d. An example of a change to a "more restrictive classification" would be changing from a restaurant with drive-in or drive through service to an auto parts sales store, or from an auto repair and maintenance facility (major) to a business support service facility in compliance with Table 2-4 (Commercial - Allowed Uses and Permit Requirements) in Article 2 (Zoning Districts and Allowable Land Uses).

- 3. Loss of nonconforming use status.** Without any further action by the City, a nonconforming use shall not retain the benefits under this Chapter if:
- a. The nonconforming use of land, or a nonconforming use within a structure, ceases for any reason for 180 days or more;
    - (1) A vacant nonconformity may be occupied by a use for which it was designed if so occupied within a period of 180 days after the effective date of this Zoning Ordinance or after the date when the nonconformity first became vacant.
    - (2) If the use is discontinued for a period of 180 days or more, the land or structure shall lose its nonconforming status, and shall be altered to conform to the provisions of this Zoning Ordinance. The use shall be considered discontinued when any of the following apply:
      - (a) The intent of the owner to discontinue use of the nonconformity is apparent; or
      - (b) Where characteristic furnishings and equipment of the use have been removed and not replaced with equivalent infrastructure during this time.
  - b. The structure in which the nonconforming use is conducted or maintained is moved any distance on the site for any reason, or is removed from the site.
  - c. The 180-day period shall begin to run as soon as the Department becomes aware of the fact that the nonconforming use has been discontinued, moved, or removed in compliance with Subparagraphs a. and b., above.
- 4. Additional uses.** Additional uses may be allowed on the site of a nonconforming use only in the case of a multi-tenant structure or site, or where the nonconforming use is first discontinued, and any replacement use complies with all applicable provisions of this Zoning Ordinance.
- 5. Replacement uses.** The use of a the site after the discontinuance or removal of a nonconforming use shall comply with all applicable requirements of this Zoning Ordinance and the applicable zoning district.
- 6. Junkyards.** Any junkyard, as this term is defined in Article 8 (Definitions), which exists as a nonconforming use:
- a. **Residential zoning district.** In any residential zoning district, shall be changed to a conforming use or removed within 12 months after the effective date of this Zoning Ordinance; or



- c. **Assessed value.** For the purpose of this Subparagraph, "assessed value" shall mean the then assessed value of the structure as shown on the current County property assessment rolls in effect at the time of the occurrence of the casualty, or on the date of application for the required Building Permit.
- 6. **Replacement of a residential structure after destruction.** Any residential structure legally existing as a nonconforming use on October 1, 1990 in any industrial zoning district may be rebuilt or restored if damaged or destroyed by fire or any other calamity or act of God, provided the rebuilding or restoration is commenced within 180 days of the damage or destruction and diligently pursued to completion. However, the rebuilt or restored structure shall not exceed the square footage of the original structure and shall otherwise conform to all other applicable regulations for residential structures. (See also Section 17.82.040 [Single-and Multi-Family Dwelling Units Exempt], below.)
- 7. **Seismic retrofitting/Building Code compliance.** Repairs or alterations otherwise required by law shall be allowed in the following circumstances:
  - a. Reconstruction required to reinforce unreinforced masonry structures shall be allowed without cost limitations, provided the retrofitting is limited exclusively to compliance with earthquake safety standards; and
  - b. Reconstruction required to comply with Building Code requirements shall be allowed without cost limitations, provided the retrofitting/ Code compliance is limited exclusively to compliance with earthquake safety standards and/ or other applicable Building Code requirements, including State law (e.g., Title 24, California Code of Regulations, etc).
- 8. **Initiation of construction.** Nothing contained in this Chapter shall require any change in the plans, construction, or designated use of any structure upon which actual construction was lawfully initiated before the effective date of this Zoning Ordinance. For the purposes of this Zoning Ordinance, actual construction shall mean the placing of construction materials in a permanent manner, excavation of a basement, or demolition of existing structures preparatory to rebuilding; provided, that in all cases construction work shall be diligently pursued until completion of the subject structure(s).

### **17.82.030 - Nonconforming Signs**

Requirements for nonconforming signs are provided by Section 17.32.080 (Nonconforming Signs).

### **17.82.040 - Single-and Multi-Family Dwelling Units Exempt**

- A. **Dwellings.** Nonconforming single- and multi-family dwellings located in any zoning district that have been involuntarily damaged or destroyed by a catastrophic event may be reconstructed or replaced with a new structure(s) using the same development

standards applied to the damaged or destroyed structure(s) (e.g., setbacks, square footage, building height, and density standards), but only when the reconstructed or replacement structures comply with State law (Government Code Section 65852.25).

- B. Mobile homes.** A nonconforming mobile home may be replaced with a new or newer and larger mobile home placed in the same location as the former unit, subject to Site Plan and Architectural Approval (Section 17.42.030).
- C. Code compliance.** All new construction shall comply with current Building, Electrical, Plumbing, and Fire Code requirements.
- D. Site Plan and Architectural Approval.** The Director may require Site Plan and Architectural Approval (Section 17.42.030) for the replacement of a destroyed dwelling or residential project.

### **17.82.050 - Public Structures and Utilities Exempt**

Nothing in this Chapter shall be construed to require the discontinuance, removal, or termination, or to prohibit the alteration, expansion, maintenance, modernization, rebuilding, reconstruction, repair, or replacement of a publicly owned structure or utility.

### **17.82.060 - Nonconforming Parcels**

- A. Determination of nonconforming status.** A nonconforming parcel of record that does not comply with the access, area, or dimensional requirements of this Zoning Ordinance for the zoning district in which it is located, shall be considered to be a legal building site if it meets one of the criteria specified by this Section. It shall be the responsibility of the applicant to produce sufficient evidence to establish the applicability of one or more of the following.
  - 1. Approved subdivision.** The parcel was created through a subdivision approved by the City or the County, before incorporation.
  - 2. Individual parcel legally created by deed.** The parcel is under one ownership and of record, and was legally created by a recorded deed before the effective date of the zoning amendment that made the parcel nonconforming.
  - 3. Variance or lot line adjustment.** The parcel was approved through the Variance procedure (Section 17.42.070) or its current configuration resulted from a lot line adjustment.
  - 4. Partial government acquisition.** The parcel was created in conformity with the provisions of this Zoning Ordinance, but was made nonconforming when a portion of the parcel was acquired by a governmental entity.

**B. Limitations on use of nonconforming parcels.** Nonconforming parcels shall be developed and used only as follows.

- 1. Site Plan and Architectural Approval required.** The Director may require Site Plan and Architectural Approval (Section 17.42.030) for development proposed on nonconforming parcels.
- 2. Further subdivision prohibited.** Where structures have been erected on a nonconforming parcel, the area where the structures are located shall not be later subdivided, nor shall lot lines be altered through lot line adjustment, so as to reduce the building site area and/ or frontage below the requirements of the applicable zoning district or other applicable provisions of this Zoning Ordinance, or in any way that makes the use of the parcel more nonconforming.

### **17.82.070 - Conformity of Uses Requiring Use Permits**

**A. Use allowed with Use Permit approval.**

1. Any use of a structure for which a Use Permit is required, or for which a Use Permit may be granted, which use is existing at the time of adoption of this Zoning Ordinance, in any zoning district in which the use is allowed subject to the granting of a Use Permit, shall without further City action, be considered a conforming use.
2. A land use that was legally established without a Use Permit, but would be required by current Zoning Ordinance provisions to have Use Permit approval, shall not be altered in any way unless a Use Permit is first obtained.

**B. Use no longer allowed with Use Permit approval.** A land use that was established with Use Permit approval, but is not allowed with Use Permit approval by the current Zoning Ordinance may continue only in compliance with the original Use Permit. If the original Use Permit specified a termination date, then the use shall terminate in compliance with the Use Permit.

### **17.82.080 - Unlawful Uses and Structures**

- A. Violations.** Uses and structures which did not comply with the applicable provisions of this Zoning Ordinance or prior planning and zoning regulations when established are violations of this Zoning Ordinance and are subject to the provisions of Chapter 17.90 (Enforcement).
- B. Illegal uses and structures prohibited.** This Chapter does not grant any right to continue occupancy of property containing an illegal use or structure.
- C. Permits required.** The illegal use or structure shall not continue unless/ until permits and entitlements required by this Zoning Ordinance and this Code are first obtained.

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**17.82.090 - Nuisance Abatement**

In the event that a nonconforming use or structure is found to constitute a public nuisance, appropriate action shall be taken by the City, in compliance with Chapter 17.90 of this Code.

## CHAPTER 17.84 - APPEALS

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### Sections:

17.84.010 - Purpose of Chapter

17.84.020 - Commission's Review

17.84.030 - Council's Review

17.84.040 - Eligibility

17.84.050 - Appeal Subjects and Jurisdiction

17.84.060 - Application Filing, Processing, Review and Action

### 17.84.010 - Purpose of Chapter

This Chapter establishes procedures for the following:

- A. **Commission's review.** The Commission's review of a decision rendered by the Director or SPARC;
- B. **Council's review.** The Council's review of a decision rendered by the Commission; and
- C. **Eligibility.** Other eligible appellants, as identified in Section 17.84.040 (Eligibility), below.

### 17.84.020 - Commission's Review

- A. **Review.** The Commission may choose to review a decision rendered by the Director or SPARC.
- B. **Discussion.**
  - 1. A member of the Commission may request the opportunity to discuss any decision previously rendered.
  - 2. A majority vote of the Commission is required to initiate an appeal of the decision.
- C. **Appeal.** Once the vote to initiate an appeal is passed by a majority, the matter shall be scheduled for hearing by the Director.

### 17.84.030 - Council's Review

- A. **Review.** The Council may choose to review a decision rendered the Commission.
- B. **Discussion.**
  - 1. A member of the Council may request the opportunity to discuss any decision previously rendered.

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2. A majority vote of the Council is required to initiate an appeal of the decision.

- C. Appeal.** Once the vote to initiate an appeal is passed by a majority, the matter shall be scheduled for hearing by the City Clerk.
- D. Decision final.** The decision of the Council on the appeal shall be final and shall become effective upon adoption of the resolution by the Council.

**17.84.040 - Eligibility**

An appeal may be filed by:

- A. Administrative determination.** Any person affected by an administrative determination or action by the Director.
- B. Land use permit or hearing decision.** In the case of a land use permit or hearing decision, by anyone who, in person or through a representative, presented testimony at a public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.

**17.84.050 - Appeal Subjects and Jurisdiction**

Determinations and actions that may be appealed, and the authority to act upon an appeal shall be as follows.

- A. Ordinance administration and interpretation.** The following determinations and actions of the Director or SPARC may be appealed to the Commission and then to the Council:
1. Determinations on the meaning or applicability of the provisions of this Zoning Ordinance that are believed to be in error, and cannot be resolved with staff;
  2. Any determination that a permit application or information submitted with the application is incomplete, in compliance with State law (Government Code Section 65943); and
  3. Any enforcement action in compliance with Chapter 17.90 (Enforcement).
- B. Permit/entitlement and hearing decisions.** Decisions by the Director or SPARC may be appealed to the Commission. Decisions by the Commission may be appealed to the Council.

**17.84.060 - Appeal Filing, Processing, Review and Action****A. Timing and form of appeal.**

1. Appeal applications shall be submitted before 5:00 p.m. on the 5th business day following the date the decision is rendered by the Director or SPARC, or the adoption of the resolution by the Commission.
2. Appeal applications addressed to the Commission shall be filed with the Department, while appeals addressed to the Council shall be filed with the City Clerk.
3. The appeal application shall:
  - a. Specifically state the pertinent facts of the case and the basis for the appeal;
  - b. Be accompanied by the information identified in the Department hand out for appeal applications; and
  - c. Be accompanied by the filing fee established by the Council's Fee Resolution.

**B. Delay of proceedings.** Filing of an appeal shall delay all proceedings associated with the matter subject to the appeal (e.g., issuance of a Certificate of Occupancy, Building or Grading Permit, etc.), pending the City's final action on the appeal.**C. Joining an appeal.**

1. Only those persons who file an appeal within the specified appeal period shall be considered appellants of the matter under appeal.
2. Any person who wishes to join an appeal shall follow the same procedures for an appellant.
3. A person(s) shall not be allowed to join an appeal after the end of the specified appeal period.

**D. Action on appeals.** The appeal body shall conduct a public hearing in compliance with Chapter 17.88 (Public Hearings).

1. **Scope of review and decision.** When reviewing an appeal the review authority may:
  - a. Consider any issues associated with the decision being appealed, in addition to the specific grounds for the appeal. The review authority shall also consider any environmental determination applicable to the entitlement or decision being appealed;
  - b. By resolution, uphold, uphold in part, or reverse the action, the determination, or decision that is the subject of the appeal;

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- c. Adopt additional conditions of approval deemed reasonable and necessary; and
    - d. Disapprove the land use permit approved by the previous review authority, even though the appellant only requested a modification or elimination of one or more conditions of approval.
  - 2. **New evidence.** If new or different evidence is presented during the appeal hearing, the Commission or Council, may refer the matter back to the Director, SPARC, or Commission, as applicable, for a report on the new or different evidence before a final decision on the appeal.
  - 3. **Findings.** When reviewing an appeal the review authority shall adopt findings in support of the intended action on the appeal. The nature of the findings shall be in compliance with the findings adopted by the original review authority (e.g., Use Permits — 17.42.050, Planned Development Permits — 17.42.070, Variances — 17.42.060, etc.)
- E. Mailing of resolution.** The Director or City Clerk, as applicable to the level of review authority, shall mail a copy of the resolution to the appellant, the applicant (if not the appellant), the Commission, and the Council within 10 days after the date the decision is rendered.

## CHAPTER 17.86 - AMENDMENTS

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### Sections:

- 17.86.010 - Purpose of Chapter
- 17.86.020 - Applicability
- 17.86.030 - Initiation of Amendments
- 17.86.040 - Hearings and Notice
- 17.86.050 - Commission's Action on Amendments
- 17.86.060 - Council's Action on Amendments
- 17.86.070 - Findings and Decision
- 17.86.080 - Effective Date
- 17.86.090 - Rezoning

### 17.86.010 - Purpose of Chapter

This Chapter establishes provisions for the amendment of the General Plan, the official Zoning Map, or this Zoning Ordinance whenever required by public necessity and general welfare.

### 17.86.020 - Applicability

- A. General Plan.** A General Plan amendment may include revisions to text or diagrams.
- B. Zoning Map.** A Zoning Map amendment has the effect of rezoning property from one zoning district to another.
- C. Zoning Ordinance.** A Zoning Ordinance amendment may modify any standard, requirement, or procedure applicable to land use and/ or development within the City.

### 17.86.030 - Initiation of Amendments

An amendment to the General Plan, the Zoning Map, or this Zoning Ordinance shall be initiated in compliance with this Section.

- A. Who may initiate an amendment.** An amendment may be initiated by:
  - 1. The Council;
  - 2. The Commission;
  - 3. The Director; or
  - 4. The filing of an amendment application with the Department by an eligible applicant, as identified in Section 17.40.040 C. (Eligibility, filing), **EXCEPT** for a Zoning

Ordinance amendment, which may **ONLY** be initiated by the Council or Commission or director.

**B. Application filing and processing.**

1. An application for an amendment shall be filed and processed in compliance with Chapter 17.40 (Application Filing and Processing).
2. The application shall be accompanied by the information identified in the Department handout for amendment applications.

**17.86.040 - Hearings and Notice**

- A. Scheduling of hearings.** Upon receipt of a complete application to amend the General Plan, the Zoning Map, or this Zoning Ordinance, or upon initiation by the Commission or Council, and following Department review, public hearings shall be scheduled before the Commission and Council.
- B. Notice of hearings.** Notice of the hearings shall be given in compliance with Chapter 17.88 (Public Hearings).

**17.86.050 - Commission's Action on Amendments**

- A. Commission's recommendation.** The Commission shall make a written recommendation to the Council whether to approve, approve in modified form, or disapprove the proposed amendment, based upon the findings contained in Section 17.86.070 (Findings and Decision), below.
- B. Recommendation for disapproval.** The decision of the Commission, recommending disapproval of the amendment, shall be final unless, within 20 days after the Commission's action, the applicant/ appellant files a written appeal with the City Clerk requesting a hearing before the Council.

**17.86.060 - Council's Action on Amendments**

- A. Approval or disapproval of amendment.** Upon receipt of the Commission's recommendation, the Council shall, approve, approve in modified form, or disapprove the proposed amendment based upon the findings in Section 17.86.070 (Findings and Decision), below.
- B. Referral to Commission.**
1. If the Council proposes to adopt any substantial modification to the amendment not previously considered by the Commission during its hearings, the proposed modification shall be first referred back to the Commission for its recommendation, in compliance with State law (Government Code Sections 65356 [General Plan amendments] and 65857 [Zoning Map/ Ordinance Amendments]).

2. Failure of the Commission to report back to the Council within 45 days for General Plan amendments or 40 days for Zoning Map/ Ordinance amendments after the referral, or within a longer time set by the Council, shall be deemed a recommendation for approval of the modification.

### **17.86.070 - Findings and Decision**

- A. Findings for General Plan amendments.** An amendment to the General Plan may be approved only if all of the following findings of fact can be made in a positive manner:

1. The proposed amendment is internally consistent with the General Plan;
2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City;
3. The site is physically suitable (including absence of physical constraints, access, compatibility with adjoining land uses, and provision of utilities) for the requested/ anticipated land use developments; and
4. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA), and the *Lodi Environmental Review Guidelines*.

- B. Findings for Zoning Map/Ordinance amendments.** An amendment to the Official Zoning Map or this Zoning Ordinance may be approved only if the review authority first finds all of the following, as applicable to the type of amendment.

**1. Findings required for all Zoning Map/Ordinance amendments:**

- a. The proposed amendment is consistent with the General Plan;
- b. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
- c. The proposed project has been reviewed in compliance with the provisions of the California Environmental Quality Act (CEQA), and the *Lodi Environmental Review Guidelines*.

- 2. Additional finding for Zoning Map amendments:** The site is physically suitable (including absence of physical constraints, access, compatibility with adjoining land uses, and provision of utilities) for the requested zoning designations and anticipated land uses/ developments.

- 3. Additional finding for Zoning Ordinance amendments:** The proposed amendment is internally consistent with other applicable provisions of this Zoning Ordinance.

**17.86.080 - Effective Date**

A Zoning Ordinance/ Map amendment shall become effective on the 31st day following the adoption of an ordinance by the Council in compliance with Chapter 17.86 of this Code. A General Plan amendment shall become effective upon the adoption of a resolution by the Council.

**17.86.090 - Prezoning**

- A. Purpose.** An unincorporated property within the City's sphere of influence may be prezoned to the zoning district that would apply upon annexation to the City.
- B. Initiation and processing.** A prezoning shall be initiated, processed, and approved or disapproved in the same manner as provided for other amendments by this Chapter.
- C. Application of official zoning designation.** Upon the effective date of annexation, the zoning designation established by prezoning shall become the official zoning for the property and shall be so designated on the Zoning Map.

## CHAPTER 17.88 - PUBLIC HEARINGS

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### Sections:

- 17.88.010 - Purpose of Chapter
- 17.88.020 - Notice of Hearing
- 17.88.030 - Scheduling of Hearing
- 17.88.040 - Review Authority Decision and Notice
- 17.88.050 - Recommendation by Commission
- 17.88.060 - Effective Date of Decision
- 17.88.070 - Hearing Procedures

### 17.88.010 - Purpose of Chapter

This Chapter establishes procedures for public hearings before the Director, SPARC, Commission, and Council. When a public hearing is required by this Zoning Ordinance, public notice shall be given and the hearing shall be conducted as provided by this Chapter.

### 17.88.020 - Notice of Hearing

When a land use permit, or other matter requires a public hearing, the public shall be provided notice of the hearing in compliance with State law (Government Code Sections 65090, 65091, 65094, and 66451.3, and Public Resources Code 21000 et seq.), and as required by this Chapter.

#### A. **Contents of notice.** Notice of a public hearing shall include:

1. **Hearing information.** The date, time, and place of the hearing and the name of the hearing body; a brief description of the City's general procedure concerning the conduct of hearings and decisions; and the phone number and street address of the Department, where an interested person could call or visit to obtain additional information;
2. **Project information.** The name of the applicant; the City's file number assigned to the application; a general explanation of the matter to be considered; a general description, in text and/ or by diagram, of the location of the property that is the subject of the hearing; and
3. **Statement on environmental document.** If a draft Negative Declaration or Environmental Impact Report has been prepared for the project in compliance with the *Lodi Environmental Review Guidelines*, the hearing notice shall include a statement that the hearing body will also consider approval of the draft Negative Declaration or certification of the final Environmental Impact Report.

**B. Method of notice distribution.** Notice of a public hearing required by this Chapter for a land use permit, amendment, or appeal shall be given as follows, as required by State law (Government Code Sections 65090 and 65091).

- 1. Publication.** Notice shall be published at least once in a newspaper of general circulation in the City at least 10 days before the date of the hearing.
- 2. Mailing.** Notice shall be mailed or delivered at least 10 days before the date of the hearing to the following:
  - a. Owners of the project site.** The owners of the property being considered in the application, or the owner's agent, and the applicant;
  - b. Local agencies.** Each local agency expected to provide schools, utilities, or other essential facilities or services to the project, whose ability to provide the facilities and services may be significantly affected;
  - c. Affected owners.** All owners of real property as shown on the latest County equalized assessment roll, within a radius of 300 feet from the exterior boundaries of the parcel that is the subject of the hearing; and any other person whose property might, in the judgement of the Director, be affected by the proposed project; and
  - d. Persons requesting notice.** Any person who has filed a written request for notice with the Director and has paid the required fee for the notice.
- 3. Alternative to mailing.** If the number of property owners to whom notice would be mailed in compliance with Subsection B.2 above is more than 1,000, the Director may choose to provide the alternative notice allowed by State law (Government Code Section 65091(a)(3)).
- 4. Additional notice.** In addition to the types of notice required above, the Director may provide any additional notice with content or using a distribution method as the Director determines is necessary or desirable.

### **17.88.030 - Scheduling of Hearing**

After the completion of any environmental documents required by the California Environmental Quality Act (CEQA), the matter shall be scheduled for public hearing on a Director, SPARC, Commission, or Council agenda (as applicable).

**17.88.040 - Review Authority Decision and Notice****A. Decision.**

1. The review authority (Director, SPARC, Commission, or Council, as applicable) may announce and record their decision on the matter being considered at the conclusion of a scheduled hearing, defer action and continue the matter to a later meeting agenda in compliance with Section 17.88.070 (Hearing Procedure), or, in the case of the Director, take the matter under advisement.
2. The Director may instead refer the matter to the Commission for determination. A referral will require a new noticed hearing before the Commission.
3. The decision of the Council on any matter shall be final.

**B. Notice of decision.** The notice of decision shall contain any conditions of approval, and reporting/ monitoring requirements deemed necessary to mitigate any impacts and protect the public convenience, health, interest, safety, or general welfare of the City.**C. Mailing of the notice.**

1. After the final decision or recommendation is rendered by the review authority, notice of the decision shall be mailed to the applicant at the address shown on the application.
2. A copy of the notice of decision shall also be sent to the property owner, if different from the applicant and to all other persons who have filed a written request for notice.

**17.88.050 - Recommendation by Commission****A. Commission's action.** At the conclusion of any public hearing on an amendment (e.g., General Plan, Zoning Map, or Zoning Ordinance), a development agreement, or a specific plan the Commission shall forward a recommendation, including all required findings, to the Council for final action.**B. Mailing of recommendation.** Following the hearing, a copy of the Commission's recommendation shall be mailed to the applicant at the address shown on the application.**17.88.060 - Effective Date of Decision**

A decision of the Director, SPARC, or Commission (other than a recommendation in compliance with Section 17.88.050) is final and effective after 5:00 p.m. on the 5th business day following the date of decision, unless an appeal is filed in compliance with Chapter 17.84 (Appeals).

### **17.88.070 - Hearing Procedures**

- A. Holding of hearings.** Hearings shall be held at the date, time, and place described in the public notice required by this Chapter.
- B. Continuances.** If a hearing cannot be completed on the scheduled date, the presiding Councilperson or Commissioner, before the adjournment or recess of the hearing, may continue the hearing by publicly announcing the date, time, and place to which the hearing will be continued.
- C. Additional notice not required.** Additional notice for the continued hearing is not required.

## CHAPTER 17.90 - ENFORCEMENT

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### Sections:

- 17.90.010 - Purpose of Chapter
- 17.90.020 - Permits and Licenses
- 17.90.030 - Official Duty to Enforce
- 17.90.040 - Violations
- 17.90.050 - Remedies are Cumulative
- 17.90.060 - Inspection
- 17.90.070 - Permit Revocation or Modification
- 17.90.080 - Initial Enforcement Action
- 17.90.090 - Legal Remedies
- 17.90.100 - Recovery of Costs
- 17.90.110 - Additional Permit Processing Fees
- 17.90.120 - Reinspection Fees

### 17.90.010 - Purpose of Chapter

This Chapter establishes provisions which are intended to ensure compliance with the requirements of this Zoning Ordinance and any conditions of land use permit or subdivision approval, to promote the City's planning efforts, and for the protection of the public health, safety, and welfare of the City.

### 17.90.020 - Permits and Licenses

All departments, officials, and public employees of the City who are assigned the authority or duty to issue permits or licenses shall comply with the provisions of this Zoning Ordinance.

- A. Permits in conflict with Zoning Ordinance.** Permits for uses or structures that would be in conflict with the provisions of this Zoning Ordinance shall not be issued.
- B. Permits deemed void.** Any permit issued in conflict with the provisions of this Zoning Ordinance shall be deemed void.
- C. Actions deemed void.** Any action taken by an official or public employee of the City in conflict with the provisions of this Zoning Ordinance shall be deemed void.

### 17.90.030 - Official Duty to Enforce

- A. Designated City officials.** The City Manager, Director, and Community Improvement Manager may:
  - 1. Exercise the authority provided in Section 836.5 of the Penal Code; and

2. Issue citations for any violations of this Zoning Ordinance pertaining to the use of any land and the addition, alteration, construction, conversion, erection, moving, reconstruction, or use of any structure.

**B. Other City officials.** All officials of the City charged by the law with the general duty of enforcing City ordinances shall also enforce the provisions of this Zoning Ordinance.

### **17.90.040 - Violations**

Any structure constructed or maintained contrary to the provisions of this Zoning Ordinance and any use of land or structure operated or maintained contrary to the provisions of this Zoning Ordinance are hereby declared to be a public nuisance.

**A. Public nuisance.** Any structure or use which is altered, constructed, converted, enlarged, erected, established, maintained, moved, or operated, contrary to the provisions of this Zoning Ordinance or any applicable condition of approval imposed on a permit, is hereby declared to be unlawful and a public nuisance, and shall be subject to the remedies and penalties identified in this Chapter and Chapter 1.08 of this Code.

**B. Infractions.** Except where otherwise provided by this Zoning Ordinance, it is an infraction for any person to do any act forbidden or fail to perform any act required by this Zoning Ordinance. Penalties for infractions shall be in compliance with State law (Government Code Section 36900) and Chapter 1.08 of this Code.

**C. Stop Work Order.**

1. Any construction in violation of this Zoning Ordinance or any conditions imposed on a permit shall be subject to the issuance of a "Stop Work Order."
2. Any violation of a Stop Work Order shall constitute an infraction, subject to the penalties described in Chapter 1.08 of this Code.

### **17.90.050 - Remedies are Cumulative**

**A. New and separate offense.** Each day any violation of this Zoning Ordinance continues is a new and separate offense.

**B. Cumulative, not exclusive.** All remedies contained in this Zoning Ordinance for the handling of violations or enforcement of the provisions of this Zoning Ordinance shall be cumulative and not exclusive of any other applicable provisions of City, County, State, or Federal law.

**C. Other remedies.** Should a person be found guilty and convicted of an infraction for the violation of any provision of this Zoning Ordinance, the conviction shall not prevent the City from pursuing any other available remedy to correct the violations.

**17.90.060 - Inspection**

- A. Preapproval inspections.** Every applicant seeking a permit or any other action in compliance with this Zoning Ordinance shall allow the City officials handling the application access to any premises or property which is the subject of the application.
- B. Post approval inspections.** If the permit or other action in compliance with this Zoning Ordinance is approved, the owner or applicant shall allow appropriate City officials access to the premises in order to determine continued compliance with the approved permit and/ or any conditions of approval imposed on the permit.

**17.90.070 - Permit Revocation or Modification**

- A. Procedures.** This Section provides procedures for securing punitive revocation or modification of previously approved land use permits or entitlements.
- B. Revocations.** The City's action to revoke an entitlement shall have the effect of terminating the entitlement and denying the privileges granted by the original approval.
- C. Modifications.**
1. The City's action to modify rather than revoke an entitlement shall have the effect of changing the operational aspects of the entitlement.
  2. The changes may include the operational aspects related to buffers, duration of the entitlement, hours of operation, landscaping and maintenance, lighting, parking, performance guarantees, property maintenance, signs, surfacing, traffic circulation, etc.
- D. Hearings and notice.**
1. The appropriate review authority shall hold a public hearing to revoke or modify an application, entitlement, or permit granted in compliance with the provisions of this Zoning Ordinance.
  2. Ten days before the public hearing, notice shall be delivered in writing to the applicant and/ or owner of the property for which the permit was granted.
  3. Notice shall be deemed delivered two days after being mailed, certified and first class, through the United States Postal Service, postage paid, to the owner as shown on the County's current equalized assessment roll and to the project applicant, if not the owner of the subject property.

**E. Review authority action:**

1. **Permits.** A land use entitlement or permit may be revoked or modified by the review authority (e.g., Director, SPARC, Commission, or Council) which originally approved the entitlement or permit, or the equivalent City review authority, for entitlements or permits originally approved under the County's authority, if any one of the following findings of fact can be made in a positive manner:
  - a. Circumstances under which the entitlement or permit was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit can no longer be made in a positive manner and the public health, safety, and welfare require the revocation;
  - b. The entitlement or permit was issued, in whole or in part, on the basis of a misrepresentation or omission of a material statement in the application, or in the applicant's testimony presented during the public hearing, for the entitlement or permit;
  - c. One or more of the conditions of the permit have not been substantially fulfilled or have been violated;
  - d. The use or structure for which the permit was granted has ceased to exist or has been suspended for at least 180 days, as defined in Section 17.82.020.A (Loss of Nonconforming Status);
  - e. The improvement authorized in compliance with the permit is in violation of any code, law, ordinance, regulation, or statute; or
  - f. The improvement/ use allowed by the permit has become detrimental to the public health, safety, or welfare, or the manner of operation constitutes or is creating a public nuisance.
2. **Variances.** A Variance (major or minor) may be revoked or modified by the review authority which originally approved the entitlement, or the equivalent City review authority, for entitlements originally approved under the County's authority, if any one of the following findings of fact can be made in a positive manner, in addition to those outlined in Subsection B.1, above:
  - a. Circumstances under which the entitlement or permit was granted have been changed by the applicant to a degree that one or more of the findings contained in the original permit can no longer be made in a positive manner, and the grantee has not substantially exercised the rights granted by the Variance; or
  - b. One or more of the conditions of the Variance have not been met, or have been violated, and the grantee has not substantially exercised the rights granted by the Variance.

**17.90.080 - Initial Enforcement Action**

This Section describes the procedures for initiating enforcement action in cases where the Director has determined that real property within the City is being used, maintained, or allowed to exist in violation of the provisions of this Zoning Ordinance. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Chapter may be avoided.

**A. Notice to responsible parties.** The Director shall provide the record owner of the subject site and any person in possession or control of the site with a written Notice of Violation, which shall include the following information:

1. A description of the violation, and citations of applicable Zoning Ordinance provisions being violated;
2. A time limit for correcting the violation in compliance with Subsection B, below;
3. A statement that the City intends to charge the property owner for all administrative costs associated with the abatement of the violations in compliance with Section 17.90.100 (Recovery of Costs), and/ or initiate legal action as described in Section 17.90.090 (Legal Remedies);
4. A statement that the property owner may request and be provided a meeting with the Director to discuss possible methods and time limits for the correction of the violations.

**B. Time limit for correction.**

1. The Notice of Violation shall state that the violations shall be corrected within 30 days from the date of the notice to avoid further enforcement action by the City, unless the responsible party contacts the Director within that time to arrange for a longer period for correction.
2. The 30-day time limit may be extended by the Director or Community Improvement Manager upon determining that the responsible party will likely correct the violations within a reasonable time.
3. The Director may also require through the Notice of Violation that the correction occur within less than 30 days if the Director determines that the violation constitutes a hazard to public health or safety.

**C. Use of other enforcement procedures.** The enforcement procedures of Section 17.90.090 (Legal Remedies) may be employed by the Director after or instead of the provisions of this Section where the Director determines that this Section would be ineffective in securing the correction of the violations within a reasonable time.

**17.90.090 - Legal Remedies**

The City may choose to undertake any, or a combination, of the following legal actions to correct and/ or abate any nuisance or violation of this Zoning Ordinance.

**A. Civil actions.**

1. **Injunction.** The City Attorney, upon order of the Council, may apply to the Superior Court for injunctive relief to terminate a violation of this Zoning Ordinance.
2. **Abatement proceedings.** Where any person fails to abate a violation after being provided a Notice of Violation in compliance with Section 17.90.080.A and the opportunity to correct or end the violation, the City Attorney, upon order of the Council, shall apply to the Superior Court for an order authorizing the City to undertake actions necessary to abate the violation and require the violator to pay for the cost of the actions.
3. **Nuisance abatement.** The City may pursue nuisance abatement in compliance with Chapter 17.82.090 (Nuisance Abatement) of this Code.

**B. Civil remedies and penalties.**

1. **Civil penalties.** Any person who willfully violates the provisions of this Zoning Ordinance or any permit issued in compliance with this Zoning Ordinance, shall be liable for a civil penalty in compliance with the Council's Fee Resolution for each day that the violation continues to exist.
2. **Costs and damages.** Any person violating any provisions of this Zoning Ordinance or any permit issued in compliance with this Zoning Ordinance, shall be liable to the City for the costs incurred and the damages suffered by the City, its agents, and agencies as a direct result of the violations.
3. **Procedure.** In determining the amount of the civil penalty to impose, the Court should consider all relevant circumstances, including the extent of the harm caused by the conduct constituting a violation, the nature and persistence of the conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the defendant, whether corporate or individual, and any corrective action taken by defendant.

**C. Criminal actions and penalties.** Any person, whether as agent, principal, or otherwise, violating or causing the violation of any of the provisions of this Zoning Ordinance shall be guilty of an infraction and shall be subject to the penalties identified in the bail schedule adopted by the San Joaquin County Superior Court.

**D. No limit on City's options.** The penalties identified in this Chapter do not limit the right of the City through its legal representative(s), as authorized by the Council upon request of the enforcing officials, to institute any appropriate legal procedure(s) as prescribed by

law to abate, correct, enjoin, or restrain any actual or threatened violation of this Zoning Ordinance.

### **17.90.100 - Recovery of Costs**

This Section establishes procedures for the recovery of administrative costs, including staff and City Attorney time expended on the enforcement of the provisions of this Zoning Ordinance in cases where no permit is required in order to correct a violation. The intent of this Section is to recover City administrative costs reasonably related to enforcement.

#### **A. Record of costs.**

1. The Department shall maintain records of all administrative costs, incurred by responsible City departments, associated with the processing of violations and enforcement of this Zoning Ordinance, and shall recover the costs from the property owner in compliance with this Section.
2. Staff time shall be calculated at an hourly rate as established and revised from time to time by the Council.

#### **B. Notice.** Upon investigation and a determination that a violation of any of the provisions of this Zoning Ordinance is found to exist, the Director shall notify the record owner or any person having possession or control of the property by mail, of the existence of the violation, the Department's intent to charge the property owner for all administrative costs associated with enforcement, and of the owner's right to a hearing on any objections they may have. The notice shall be in a form approved by the City Attorney.

#### **C. Summary of costs and notice.**

1. At the conclusion of the case, the Director shall send a summary of costs associated with enforcement to the owner and/ or person having possession or control of the property by certified and first class mail.
2. The summary shall include a notice in a form approved by the City Attorney, advising the responsible party of their right to request a hearing on the charges for City cost recovery within 10 days of the date of the notice, and that if no request for hearing is filed, the responsible party will be liable for the charges.
3. In the event that no request for hearing is timely filed or, after a hearing the Director affirms the validity of the costs, the property owner or person in control shall be liable to the City in the amount stated in the summary or any lesser amount as determined by the Director.
4. The costs shall be recoverable by the City in any of the following manners:
  - a. A civil action in the name of the City, in any court of competent jurisdiction; or

- b. By tax assessment; or
- c. By a lien on the subject property.

**D. Request for hearing on costs.** Any property owner, or other person having possession and control of the subject property, who receives a summary of costs shall have the right to a hearing before the Director on their objections to the proposed costs.

1. A request for hearing shall be filed with the Department within 10 days of the service by mail of the Department's summary of costs, on a form provided by the Department.
2. Within 30 days of the filing of the request, and on 10 days written notice, the Director shall hold a hearing on the objections, and determine their validity.
3. In determining the validity of the costs, the Director shall consider whether the total costs are reasonable in the circumstances of the case. Factors to be considered include: whether the present owner created the violation; whether there is a present ability to correct the violation; whether the owner moved promptly to correct the violation; the degree of cooperation provided by the owner; and whether reasonable minds can differ as to whether a violation exists.
4. The Director's decision shall be appealable directly to the Council in compliance with Chapter 17.84 (Appeals).

### **17.90.110 - Additional Permit Processing Fees**

Any person who alters, constructs, converts, enlarges, erects, establishes, maintains, moves, or operates any land use or structure without first obtaining any permit required by this Zoning Ordinance, shall pay the additional permit processing fees established by the Council's Fee Resolution for the correction of the violations, before being granted a permit for a use or structure on the site.

### **17.90.120 - Reinspection Fees**

**A. Amount and applicability of reinspection fee.**

1. A reinspection fee shall be imposed on each person who receives a Notice of Violation, notice and order, or letter of correction of any provision of this Zoning Ordinance, this Code, adopted Building Code, or State law.
  - a. The fee amount shall be established by the Council's Fee Resolution.
  - b. The fee may be assessed for each inspection or reinspection conducted when the particular violation for which an inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner specified in, the notice or letter.

2. The fee shall not apply to the original inspection to document the violations and shall not apply to the first scheduled compliance inspection made after the issuance of a notice or letter, whether or not the correction has been made.

**B. Continuation of the original case.**

1. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the provisions of this Zoning Ordinance or this Code for less than 180 days, the violation shall be deemed a continuation of the original case, and all inspections or reinspections, including the first inspection for the repeated offense, shall be charged a reinspection fee.
2. This fee is intended to compensate for administrative costs for unnecessary City inspections, and is not a penalty for violating this Zoning Ordinance or this Code.
3. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of this Zoning Ordinance or this Code, or costs incurred by the City for the abatement of a public nuisance.

Enforcement

17.90.120